APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,226	04/09/2001	Kevin A. McIntyre	3598-2	5634

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EXAMINER
FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
3624	

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/828,226	Applicant(s) McIntyre
	Examiner Daniel Felten	Art Unit 3624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ___3___ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *Nov 13, 2002* _____ .

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-23 and 25* _____ is/are pending in the application.

    4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-23 and 25* _____ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

    If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All b) ☐ Some* c) ☐ None of:

        1. ☐ Certified copies of the priority documents have been received.

        2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    *See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

    a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

4) ☐ Interview Summary (PTO-413) Paper No(s). _____

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____

DETAILED ACTION

1

2 1.   Receipt of the Amendment filed November 13, 2002 amending claims 1, 19 and 20,

3 canceling claim 24 and adding claim 25 is acknowledged. Claims 1-23 and 25 are pending in

4 the application and are presented to be examined upon their merits.

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7 *Response to Arguments*

8 2.   Applicant's arguments with respect to claims 1-23 have been considered but are moot

9 in view of the new ground(s) of rejection.

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12 *Claim Rejections - 35 USC § 103*

13 3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

14 obviousness rejections set forth in this Office action:

15   (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth
16   in section 102 of this title, if the differences between the subject matter sought to be patented and the prior
17   art are such that the subject matter as a whole would have been obvious at the time the invention was
18   made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall
19   not be negatived by the manner in which the invention was made.
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22 4.   Claims 1-23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over

23 Rackson et al (hereinafter "Rackson", US 6,415,270 B1) in view of Lupien et al (hereafter

24 "Lupien", US 5,689,652) .

Re Claims 1-12, 19, 20-23 and 25:

Rackson, discloses a method, as in claims 1 and 25, and computer system as in claim 19, and a computer readable medium as in claim 20 (see *memory*, col. 2, ll. 17-35), for conducting a transaction between a buyer and a seller over a global network (*Internet*), the method comprising:

(a) at least one user computer 30 running a computer program (see *multi-auction service*, col. 9, ll. 7+) that effects input information and receiving a lower limit price for a product from the seller (see *reserve price*, col. 3, ll. 13-15; and col. 11, ll. 5+)

(b) receiving an upper limit bid for the product from the buyer (see *optimal bidder*, col. 2, ll. 46-65);

(c) a system server 14 running a server program (see fig. 3, *multi-auction service and/or remote auction service*) , the at least one user computer and the system server being interconnected by a computer network, the system server receiving the input information and processing the input information. comparing (*matching*) the seller lower limit price and the buyer upper limit bid (see at least, col. 25, ll. 3-55); .

as claim 2, wherein if an overlap region exists between the seller lower limit price and the buyer upper limit bid, step (d) is practiced by setting the price point for the product at a midpoint of the overlap region (see col. 11, ll. 5-24).

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1   as claim 3, further comprising (e) if an overlap region does not exist between the seller

2   lower limit price and the buyer upper limit bid, further processing the transaction according to

3   system parameters (see *rules,* col. 9, ll.   7-35; and col. 6, ll. 44-56).

4   as in claim 4, wherein step (e) is practiced by terminating the transaction (see col. 11, ll.

5   5-32).

6   as in claims 5 and 22, wherein step (e) is practiced by notifying the seller and the buyer

7   that an overlap region does not exist and requesting the seller and the buyer to either (1) adjust

8   the respective lower limit price and upper limit bid, or (2) terminate the transaction (see col. 12,

9   ll.   51).

10   as in claim 6 and 23, further comprising, after step (e), either (1) receiving an adjusted

11   lower limit price and an adjusted upper limit bid and repeating steps (c)-(e), or (2) receiving an

12   instruction to terminate the transaction (see col. 11, ll. 5-32).

13   as in claim 7, further comprising, after step (e) receiving one of an adjusted lower limit

14   price or an adjusted upper limit bid, and repeating steps (c)-(e) (see col. 11, ll. 5-32).

15   as in claim 8, wherein step (e) is practiced by setting a theoretical price point between the

16   lower limit price and the upper limit bid (see col. 11, ll. 5-32).

17   as in claims 9 and 23, wherein step (e) is practiced by setting a theoretical price point at a

18   midpoint between the lower limit price and the upper limit bid (see col. 11, ll. 5-32).

19   as in claim 10 and 25, further comprising providing the seller and the buyer with an

20   opportunity to agree on the theoretical price point, completing the transaction only if both the

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1   seller and the buyer agree on the theoretical price point, and otherwise terminating the transaction

2   (see *closing* col. 11, ll. 5-32);

3   as in claim 12, wherein step (e) is further practiced by displaying a shortage region

4   representing a difference between the lower limit price and the upper limit bid to the seller and

5   the buyer (see col. 11, ll. 5-32).

6   Rackson fails to disclose that if an overlap region exists between the seller lower limit

7   price and the buyer upper limit bid, setting a price point for the product within the overlap region

8   setting a price point for the product with the overlap region *that is based on the lower limit price*

9   *and the upper limit bid*.

10   Lupien discloses a computerized matching system (crossing network) that allows traders

11   to input as orders a satisfaction density profile and maximum size limit which characterizes the

12   trader's degree of satisfaction to trade at any and all prices and sizes up to the aggregate limit

13   (see Lupien, col. 3, ll. 44-67; and col. 6, ll. 62+). Since Rackson teaches the concepts of an

14   *optimal bidder*, which submits the nominally highest bid to the seller and the lowest offer of

15   the buyer that is mutually benefiting both buyer and seller (see Rackson, col. 2, ll. 46+); a

16   *reserve price*, which represents the minimum price (or lower limit) the seller will accept for

17   item(s) (see Rackson, col. 3, ll. 12-32); and *selling parameters*, which include and expected

18   bid range (see Rackson, col. 3, 13+), it would have been obvious for an artisan at the time of

19   the invention of Rackson to integrate the computerized matching system of Lupien into

20   Rackson because an artisan at the time of the invention of Rackson would find the satisfaction

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1   density profile useful in order to provide an alternative basis to discover the optimal bid/price

2   (or range of bids/prices) that will cover both the buyer and the seller for a set of items. Such a

3   modification would provide a numerical and visual representation of the selling parameters

4   and the ranges that are overlapping. Thus to modify/substitute the Rackson invention with the

5   mutual satisfaction density profile would constitute an obvious expedient well with the ordinary

6   skill in the art.

7   Furthermore, artisan of ordinary skill in the art at the time of the invention of Rackson

8   would have recognized that the terms *comparing* and *overlap* found in claim 1(c) and

9   1(d)   are art recognized equivalents to the notoriously old and well known concept of

10   *matching*. *Matching* requires a system to judge between two items, or prices or processes to

11   consider "sameness", "likeness" and/or "compatibility". It is respectfully submitted that

12   Rackson discloses a system and/or embodiment in which comparing and overlapping

13   prices/criteria is involved to provide the most advantageous (or mutually beneficial) outcome

14   for the buyer and the seller during the auction period. Thus the concepts of *comparing* and

15   *overlap* would have been an obvious expedient well within the ordinary skill in the art.

16   Moreover, an artisan of ordinary skill in the art at the time of the invention of Rackson

17   would have recognized that the term, "range" or " range", implies (or inherently sugguests)

18   that there is an upper and lower limit or boundary of price, bidding or other selling parameters

19   associated with the term.

Regarding Claims 13-16:

Rackson discloses a method according to claim 1, wherein step (a) is practiced by receiving a

lower limit price range from the seller that varies with time;

as in claim 14, wherein step (b) is practiced by receiving an upper limit bid range from

the buyer that varies with time;

as in claim 15, wherein step (a) is practiced by additionally receiving an expiration

relating to the product and by receiving a lower limit price range from the seller that varies with

time to the expiration; and

as in claim 16, a method according to claim 1, wherein step (b) is practiced by

additionally receiving an expiration relating to the upper limit bid and by receiving an upper limit

bid range from the buyer that varies with time to the expiration (see Rackson, col. 17, ll. 21+; and

col. 13, ll. 25+).

Regarding Claim 17:

A method according to claim 1, wherein step (b) is practiced by allowing only one bid for the

product from the buyer (see col. 1, ll. 64+).

Regarding Claim 18:

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1   further comprising compiling a database of information relating to sellers, buyers, products and

2   price points (see Rackson, col. 2, ll. 46-65).

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6   *Conclusion*

7

8   5.   Applicant's amendment necessitated the new ground(s) of rejection presented in this

9   Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

10   Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

11   A shortened statutory period for reply to this final action is set to expire THREE

12   MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

13   MONTHS of the mailing date of this final action and the advisory action is not mailed until after

14   the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

15   will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

16   1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

17   will the statutory period for reply expire later than SIX MONTHS from the date of this final

18   action.

19

20   6.   Any inquiry concerning this communication or earlier communications from the examiner

21   should be directed to *Daniel S. Felten* whose telephone number is (703) 305-0724. The

22   examiner can normally be reached between the hours of 7:00AM to 5:30PM Monday-Thursday.

23   Any inquiry of a general nature relating to the status of this application or its proceedings should

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1 be directed to the Customer Service Office (703) 306-5631, or the examiner's supervisor

2 *Vincent Millin* whose telephone number is (703) 308-1065.

3

4 7.   Response to this action should be mailed to:

5

6   Commissioner of Patents and Trademarks

7   Washington, D.C. 20231

8

9   for formal communications intended for entry, or (703) 305-0040, for informal or draft

10 communications, please label "Proposed" or "Draft".

11   Communications via Internet e-mail regarding this application, other than those under 35

12 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be

13 addressed to *[daniel.felten@uspto.gov]*.

14   All Internet e-mail communications will be made of record in the application file. PTO

15 employees do not engage in Internet communications where there exists a possibility that

16 sensitive information could be identified or exchanged unless the record includes a properly

17 signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly

18 set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and

19 Trademark on February 25, 1997 at 1 195 OG 89.

20

21 DSF

22 **January 24, 2003**
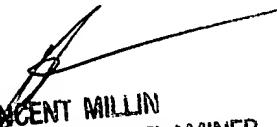
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